

INFORMATION

For Robert Cairns Wright in Edinburgh,

Against

Patrick Thomson also Wright there.

AT a publick Meeting of the Corporation of the Free-men of Wrights and Masons in St. Mary's Chapel, their ordinary Conveening-place upon the 28 November 1695, where the said Robert Cairns and Patrick Thomson were Members, and present, the said Patrick without any Provocation called the said Robert a Robber, and Rabler of his Neighbours in Edinburgh and Cannongate, and that in presence of the haill Incorporati-

on. For the which injurious and scandalous Expressions, to the effect the said Robert might be repaired of his Fame and Reputation, he did commence a Pursuit before the Commissars of Edinburgh, with the concurrence of the Procurator Fiscal of the said Court; Craving that the said Patrick might be punished, and ordained to make his publick Repentance in the Church, and there to acknowledge his Fault, and that he might be amerced in 1000 lib. the one half to the Poor, and the other half to the Pursuer, as a punishment, that such scandalous and Defamatory Expressions (wounding the Fame and Reputation of the Pursuer) deserved.

Upon this Lybel at calling before the Commissars, there is a Probation led, whereby the Lybel in calling the Pursuer a Robber, and Rabler of his Neighbours both in Edinburgh and the Cannongate, was found fully proven by the Commissars, after the advising of the Depositions of several famous Witnesses, and of purpose only, that the Pursuer might be repaired in his Fame some way, in the manner as he was Defamed; The Commissars did appoint the Defender to appear within the said St. Mary's Chappel before the Incorporation, and there with his Head uncovered, standing in a decent manner, to ask first GOD, and then the Pursuer Pardon, for the Scandalous and Injurious Expressions of Robber and Rabler uttered by him against the Pursuer, recommending to the Brethren of the said Incorporation, to call a Meeting for that effect, and to innat their Diet to the Pursuer, and to pay the said Robert Cairns the Sum of 100 lib. as expenses of Plea, and in case of the said Defender's obtempering their Sentence, assoilzied him from 26 pounds 13 shil. 4 pennies of the said 100 lib. and assoilzied him from all the rest of the Lybel.

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Of this Decreet (in place of Obedience) there was a Suspension procured on thir Reasons. 1. That the Commissars committed Iniquity in decerning *ut supra* upon probation of the Words uttered, without proving an injurious Design of the utterer. 2. Because the Words proven to have been Express, were immediatly retracted, as the haill Witnesses adduced by the Pursuer has proven, And 3. Because the Commissars were not Judges to Proccesse of Scandal and verbal Injuries, and were unjust in modifying so much Expenses, and were unequal and partial, in appointing the Deacons to intimat their Dyet to the Charger, and not to the Suspender. 4. Because the Charger has now grossly defamed the Suspender, and for which he had a Proccess depending.

At calling of which Suspension, and the Suspenders repeating of the reason above-mentioned, the Suspender added, That by the Depositions taken before the Commissars, if they were produced, it would clearly appear, that the Lybel was not at all proven; and if any such Words were proven to have been uttered, they were immediatly retracted; and yet the Commissars decerned without having any regard to the Retraction, And 2. That the Suspender being lately a Deacon of the Craft, and the Defender, although a Free-man never having attained to that preferment, although he had in passion uttered such Expressions of him, which he denys were done, a less Satisfaction might gain him.

To all the Reasons Lybelled and Eiked, it was answered in general, that it's very well known, That in all Commissars Procedures in matters of Scandals, to which they are only proper Judges *in prima instantia*, that they have a particular care and tenderness as to every Man, that in the least none can instance, that any of their Decrees pronounced by them were ever reduced upon the head of Partiality, or upon the head of the want of a full Probation; and that the Lords are intreated to take notice, that the Suspender is not only injurious to the Charger, as shall appear by the particular Answers to the Reasons, but also to the Commissars, judging that by abusing of the Commissars he does alleviate his own Crime: But it is humbly expected from your Lordships Justice, that by the Sentence to follow hereupon, there will be a Check put for the future to such unjust Methods, and particularly to the first, it is answered, That the Lybel founded on the Words uttered was relevant, although the Pursuer neither Lybelled nor proved, that the Suspender had *animum injuriandi*, because if the Words be injurious, which are the *indictum animi*: It's clearly inferred as a necessary consequence, that the Suspender had the *animum injuriandi*; for the hearers of all the Words, can have no other opinion of them; and therefore the Commissars committed no iniquity, but injustice in their Sentence, and if there was any defect, it was in their being too Modest, considering how publickly the Words were uttered.

To the second it's answered, 1. That the Suspenders alledged retracting, as it was proponed, either before the Commissars, as a Defence, or now as a Reason of Iniquity in the Commissars for repelling it, neither was, nor is relevant, unless the Suspender had not only retracted the haill Words uttered but also acknowledged his fault therefore, and so audibly, that all that heard his first Words might have heard his Retraction thereof, which was neither acknowledged, nor can be proven, in so far as some of the Witnesses adduced by the

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Charger before the Commissars, heard nothing of the foresaid Retraction and particularly *Alexander Gowdilocks* present Deacon of the *Masons*, and *Thomas Herriot*, *John Denholm* and *William Mitchel* Wrights, who although they were just by the Suspenders, and Depones upon the Suspenders uttering of the Words Lybelled, and his calling of the whole Incorporation *Beasts*; yet they remember of no Retraction, whereby it's clear, that such a Retraction not heard by all who heard the Scandalous Words, did not take off the blot that was put upon the Chargers Name, But 2. When the haill Witnesses were Interrogate by the Suspenders, upon the Retraction, all that two or three of them sayes, is, That when the Charger took Instruments upon the Suspenders expressions, that the Defender did retract, and mitigate these scandalous words by denying that he called him a Robber, but that he was an Rabler of honest mens Houses, and if that was a Retraction, and a just satisfaction for the injury committed, as the Commissars found it not so, its humbly expected, that the Lords will not, for still as the Depositions proports, the Suspenders did adhere to his injurious and defamatory expressions, that the Charger was a Rabler of honest mens houses. And it is very critical, to make a difference, for certainly a man cannot be called a Rabler, without he be in some kind a Robber: And further, to evince, that he had alwayes *animum injuriandi* the very next day thereafter, being conveyened before the Justice of Peace for Cursing, and for which he was Fyned the said day, he did repeat before the Baillie, not only the words that he uttered in *St. Maryes Chappel*, the day preceeding, but added, that he should see the Charger scourged out at the Nether-bow, by the hand of the Hangman, to the third and whole Members thereof, the Decreet is opposed, and that the Commissars are every way Judges competent to such Actions, as well to Verbal, as other Injuries, touching a Mans Fame and Reputation, which heretofore was never contraverted and that they were most just, in modifying 100 *lib.* for Expences, with the foresaid qualitie, in remitting a part, upon the Suspenders giving Obedience, without putting the Charger to further expences; For whatever he spent before the Commissars, according to their Modification, their was not an Article given up, but the Commissars received an Instruction thereof, before their Decerniture And to the pretence, that the Commissars were unequal, in ordaining Intimation to be given to the Charger and not to the Suspenders, the Suspenders is most absurd, because the Commissars understood, that it was the Suspenders that was to apply to the Deacons for a meeting, and the time that they would appoint, he behoved to know whereof the Charger might be every way Ignorant; and therefore they appointed Intimation to be made to the Charger.

To the last of the lybelled Reasons, First, it is false, that the Charger ever defamed the Suspenders, or that there is a Process depending for that effect. and 2. Its not Relevant in such Actions, that one Crime should compence another.

To the first of the eiked Reasons, the Depositions before the Commissars, by warrant of the Ordinar, are transmitted, and lying now in Process, and the Charger humbly begs they may be Read, for his own, and the Commissars Vindication, whereby the Lords will not only find the Decreet fully warranted, but also, that the Suspenders did abuse the whole Incorporation, and that therefore the Suspenders, as a common abuser of every Man, ought not now to

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go away unpunished, seing the **Charger** has been at so much pains, and great expences, both for repairing his own Fame, and vindicating the **Commissars** Justice.

To the second, It merits no Answer, for if the **Suspender** was once a **Deacon**, it was by accident, and it is probable he will never be one again; for if he be punished for this Fault, in all probability he will not again fall in the like; and to sum up all, and to take fully off the pretended Retraction, after the **Commissars** had found the **Zyel Relevant** and proven, he did give in a Bill reclaiming, and amongst others, for his Defence, he alledges, that he was not the only Person that uttered these expressions against the **Charger**, but a multitude of others, and if he erred, he erred with the multitude, which alledgeance of his, was a further defaming of him before the **Commissars**, which clearly argues, not only an *animus injuriandi*; But that for himself, he intended never to Retract, as Injurers ought to do, without a sentence compulsitor, and which Alledgeance of his, is marked about the middle of the second Sheet, from the end, And 2. All that the **Commissars** did by their Decreet, was but to put the **Suspender** to a Tryal of his sincerity, in his pretended Retraction, decerning him only in the place where he did Defame, there to acknowledge his Fault, and to crave God and the **Charger** pardon, and otherwayes the **Commissars** could not decern more favourably, having refused to ordaine him to compear before any Church, although that was craved, or to punish him in any mulct, either to the poor, or to the Pursuer, but only ordained him to pay the necessary Expences which the **Charger** was, and is yet able to Depone, was truly expended, upon such a long and tedious Process, but by his offering never to Retract before the **Commissars**, nor giving any Obedience to their Sentence pronounced; But Suspending, and grossly abusing the **Commissars**, in alledging they committed iniquity, nothing can Vindicate the **Charger** now, but your Lordships Sentence, from which, in all probability, the **Suspender** will be hopeless for another remead, by Appeal, or otherwayes, and the **Charger** humbly begs your Lordships would consider the farther Expences he is, and will be put to, in discussing this Suspension.